

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUIZ FAJARDO INGENIEROS
ASOCIADOS S.A.S., a foreign corporation,

NO. 2:16-CV-01902-RAJ

Plaintiff,

[PROPOSED] PRETRIAL ORDER

VS.

**FLOW INTERNATIONAL
CORPORATION, a Delaware corporation.**

Defendant.

JURISDICTION

This is a dispute between the citizen of a state and a citizen of a foreign state. The amount in controversy exceeds \$75,000.00 exclusive of interest and costs. This Court has subject matter jurisdiction of the dispute pursuant to 28 U.S.C. § 1332(a)(2).

CLAIMS AND AFFIRMATIVE DEFENSES

The plaintiff will pursue at trial the following claims: (1) breach of the contractual warranty by Flow International Corporation (“Flow”) and resulting damages. The defendant will pursue the following affirmative defenses: (1) the failure of Ruiz Fajardo Ingenieros Asociados S.A.S. (“Ruiz Fajardo”) to mitigate any damages it suffered.

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ADMITTED FACTS

The following facts are admitted by the parties:

1. Ruiz Fajardo is an engineering firm based outside Bogota, Colombia that provides metalworking services.

2. Flow is a technology-based manufacturing company headquartered in Kent, Washington that makes industrial waterjet cutting systems. One of Flow's waterjet cutting systems is the M4-3060C.

3. The M4-3060C is a waterjet cutting system. It uses a high-pressure pump to generate a concentrated stream of water that, when mixed with an abrasive, can cut through a variety of materials.

4. In 2013, Ruiz Fajardo decided to add a new business unit to its company that would offer advanced waterjet cutting services.

5. Ruiz Fajardo entered into a contract with Flow to purchase a M4-3060C on November 5, 2012.

6. The purchase contract includes a limited quality warranty by which "Flow warrants the Equipment to be free from defects in workmanship and materials for the period specified on the quotation, except that spare parts shall be warranted for a one-year period." The contract disclaims all other quality warranties, including the implied warranties of merchantability and fitness for a particular use. The contract conspicuously disclaims liability for incidental and consequential damages, including loss of profits, loss of use, and loss of production.

7. The system was received and installed during the second half of 2013.

STIPULATIONS

Ruiz Fajardo and Flow stipulate that:

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1 1. Evidence of Flow's 2017 service visits will not be excluded on the basis of
2 Federal Rule of Evidence 408 – Compromise Offer and Negotiations.

3 2. The parties agree that each party's respective liability expert (i.e., Mr. Fincher and
4 Mr. Tischler) will not offer testimony on Ruiz Fajardo's projected revenue, specifically the
5 issues raised in Mr. Tischler's supplemental report in Charts 1 & 2. Issues regarding Ruiz
6 Fajardo's revenue projections will be addressed by each party's respective damages expert
7 (i.e., Ms. Barrick and Mr. Solis).

8 3. Neither party shall make references to the unavailability of witnesses to testify at
9 trial. Specifically, neither party shall make references to any person's ability or inability to
10 obtain a visa to the United States.

11 **ISSUES OF LAW**

12 The following are the issues of law to be determined by the Court: (1) Whether, pursuant
13 to the parties' contract and Washington's reciprocal attorney fee statute, RCW 4.84.330, the
14 prevailing party is entitled to its reasonable attorney fees and costs.

15 **EXPERT WITNESSES**

16 a. Each party shall be limited to two (2) expert witnesses on the issues of liability and
17 damages.
18 b. The names and addresses of the expert witnesses to be used by each party at the trial and
19 the issue upon which each will testify is:

20 1. On behalf of Plaintiff:

21 i. Mr. Dieter Tischler
22 11506 Cypresswood Place Drive
23 Houston, TX 77070
24 (832) 729-5253

25 Mr. Dieter Tischler is an engineer with nearly three decades of experience in the
industrial equipment industry, primarily technology and business development of high pressure

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1 waterjet cutting and water blasting equipment. He will testify regarding the condition of the
2 Flow M4-7030C, Serial Number 67876 waterjet cuttings system with a 94I-D intensifier pump
3 and Flow's failed efforts to repair it, based on his independent evaluation of the system and of
4 Flow's repair efforts. Will testify.

5 ii. Mr. David Solis, MSF, CVA, MAFF
6 500 Yale Ave N
7 Seattle, WA 98109
8 (206) 775-8655

9 Mr. David Solis is a forensic economist. He will testify regarding the economic damages
10 incurred by Ruiz Fajardo resulting from the defects of the waterjet cutting system purchased
from Flow, based on his independent evaluation of these damages. Will testify.

11 2. On behalf of Defendant:

12 i. Mr. Richard Fincher
13 7136 Helsem Bend Cir.
14 Dallas, TX
15 (214) 616-2844

16 Mr. Richard Fincher is an engineer with global experience in manufacturing, software,
17 and technology industries. Mr. Fincher will offer testimony regarding the functionality of the
18 waterjet cutting system Ruiz Fajardo purchased, the training offered regarding the system, the
failure of Ruiz Fajardo to properly maintain the system in accordance with Flow's recommended
guidelines, and the reasonableness of the technical support services Flow offered. Will testify.

19 ii. Ms. Lorraine Barrick, CPA/ABV/CFF, CFE, ASA
20 1144 Federal Ave E
21 Seattle, WA 98102
22 (206) 860-9672

23 Ms. Lorraine Barrick is a certified public accountant, an accredited business valuer, and
24 is certified in financial forensics. She will offer testimony regarding the proper calculations to
apply to determine what damages, if any, Ruiz Fajardo suffered as a result of its failure to
properly operate the system after it was installed. Will testify.

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OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

a. In addition to the right to call any of Flow's witnesses, Plaintiff lists:

i. Túlio Ruiz
c/o Betts, Patterson & Mines P.S.
701 Pike Street, Suite 1400
Seattle, WA 98101-3927

Mr. Ruiz is a manager and an owner of Ruiz Fajardo. He will testify regarding the Waterjet cutting system M4-3060C with a 94ID intensifier pump purchased by Ruiz Fajardo. Mr. Ruiz also has knowledge regarding the alleged problems Ruiz Fajardo has had with the Waterjet system since its installation, communications with Flow regarding those problems, inspections and maintenance services that were required, Flow's software, the delays and failure to resolve the Waterjet system problems, and resulting damages to Ruiz Fajardo. Will testify.

ii. Jaime Ramirez
c/o Betts, Patterson & Mines P.S.
701 Pike Street, Suite 1400
Seattle, WA 98101-3927

Mr. Ramirez is an employee of Ruiz Fajardo. He offered deposition testimony regarding the Waterjet cutting system M4-3060C with a 94ID intensifier pump purchased by Ruiz Fajardo. Mr. Ramirez also has knowledge regarding the alleged problems Ruiz Fajardo has had with the Waterjet system since its installation, communications with Flow regarding those problems, inspections and maintenance services that were required, Flow's software, the delays and failure to resolve the Waterjet system problems, and resulting damages to Ruiz Fajardo. Video recorded/deposition transcript testimony only.

iii. Javier Gómez Peña
Amarilo El Huerto Torre 11 Apartamento 103

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Madrid – Cundinamarca Colombia

Mr. Gómez Peña is a former employee of Ruiz Fajardo and was in charge of the Design, Programming and Operation of the Waterjet machine there. He offered deposition testimony regarding the Waterjet cutting system M4-3060C with a 94ID intensifier pump purchased by Ruiz Fajardo. Mr. Gómez Peña also has knowledge regarding the alleged problems Ruiz Fajardo has had with the Waterjet system since its installation, communications with Flow regarding those problems, inspections and maintenance services that were required, Flow's software, the delays and failure to resolve the Waterjet system problems, and resulting damages to Ruiz Fajardo. Video recorded/deposition transcript testimony only.

iv. Claudia P. Gomez
Calle 17a No 68D – 17 Zona Industrial Montevideo
Bogota – Colombia

Ms. Gomez is a former employee of Ruiz Fajardo. She offered deposition testimony regarding the Waterjet cutting system M4-3060C with a 94ID intensifier pump purchased by Ruiz Fajardo. Ms. Gomez also has knowledge regarding the alleged problems Ruiz Fajardo has had with the Waterjet system since its installation, communications with Flow regarding those problems, inspections and maintenance services that were required, Flow's software, the delays and failure to resolve the Waterjet system problems, and resulting damages to Ruiz Fajardo.

v. César Cortés
Calle 12 No 10A – 56
Funza Cundinamarca
Colombia

Mr. Cortés is a former employee of Ruiz Fajardo and was a production engineer there. He offered deposition testimony regarding the Waterjet cutting system M4-3060C with a 94ID intensifier pump purchased by Ruiz Fajardo. Mr. Cortés also has knowledge regarding the

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1 alleged problems Ruiz Fajardo has had with the Waterjet system since its installation,
2 communications with Flow regarding those problems, inspections and maintenance services that
3 were required, Flow's software, the delays and failure to resolve the Waterjet system problems,
4 and resulting damages to Ruiz Fajardo. Video recorded/deposition transcript testimony only.

5 b. In addition to the right to call any of Ruiz Fajardo's witnesses, Defendant lists:

6 i. Mr. Javier Gómez
7 c/o DLA Piper LLP
8 701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044

9 Mr. Javier Gómez is Flow International's Sales Manager. Mr. Gómez may be called to
10 testify regarding the representations that were made to Ruiz Fajardo about the system before it
11 was purchased and what was told to Ruiz Fajardo about Flow providing training and servicing to
12 help Ruiz Fajardo operate the system. May testify.

13 ii. Mr. Charles Wakefield
14 c/o DLA Piper LLP
15 701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044

16 Mr. Charles Wakefield is Flow's Vice President of Systems Engineering. Mr. Wakefield
17 will be called to testify regarding the functionality of the waterjet cutting system purchased by
18 Ruiz Fajardo, the training offered regarding the system, the alleged failure of Ruiz Fajardo to
properly operate the system after it was installed, the alleged failure of Ruiz Fajardo to properly
19 maintain the system in accordance with Flow's recommended guidelines, and the technical
20 support services Flow offered. Will testify.

21 iii. Ms. Claudia Mette
22 c/o DLA Piper LLP
23 701 Fifth Avenue, Suite 7000
24 Seattle, WA 98104-7044

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1 Ms. Claudia Mette is an Office Manager in Flow's Buenos Aires office. Ms. Mette
2 offered deposition testimony regarding what was told to Ruiz Fajardo regarding Flow's
3 assistance in operating the system and the technical support services Flow offered. Video
4 recorded/deposition transcript testimony only.

5 **EXHIBITS**

6 **(a) Admissibility stipulated:**

7 Plaintiff's Exhibits

8 #1 Curriculum Vitae of Cesar Cortes Camacho

9 #2 Purchase contract between Ruiz Fajardo and Flow

10 #3 Photo – Facility Installation Area of Subject Machine

11 #4 Photo – Facility Installation Area of Subject Machine

12 #5 Flow Mach 4c Series Operations & Service Manual, Rev. C (FLOW0001060-125)

13 #14 Photo – Machine Portico

14 #15 Photo – Machine Linear Bearings

15 #16 Photo – Linear Bearings Mounting Area

16 #17 Photo – Machine Intensifier

17 #18 Photo – Machine Cutting Table

18 #19 Photo – Machine Cutting Head

19 #22 Pictures of Ruiz Fajardo Plant

20 Defendant's Exhibits

21 #100 94K Hyperpressure Intensifier Manual M-376 EN Rev J

22 #101 Hyperpressure Small High-Pressure Components Manual M-393 EN Rev B

23 #102 Dynamic XD Manual For Mach 3b Series and Mach 4cd Series M-410 EN Rev. D

24 #103 Hyperjet M-803 Rev. B manual

25 #104 Shipper's Letter of Instruction

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1 #107 Ruiz Fajardo's Powerpoint "Maquinaria Principal"

2 **(b) Authenticity stipulated, admissibility disputed:**

3 Plaintiff's Exhibits

4 #20 Notice of 30(b)(6) Deposition of Flow International Corporation

5 #24 Flow's Amended Responses and Objections to Plaintiff's First Set of Interrogatories

6 #25 Flow's Preliminary Responses and Objections to Plaintiff's First Set of Interrogatories

7 #32 Plaintiff's Answers and Reponses to Defendant's First Set of Interrogatories

8 Defendant's Exhibits

9 None

10 **(c) Authenticity and admissibility disputed:**

11 Plaintiff's Exhibits

12 #6 Emails between C. Escobar and T. Sierra (FLOW0006618-22)

13 #7 Email from C. Cores to J. Gomez re: Tubo de mezcla (FLOW0001861-67)

14 #8 Email from C. Cortes to T. Sierra re: Consulta Flow jet

15 #9 Email from C. Cortes to J. Gomez re: Oreja piston grua (FLOW0002423-24)

16 #10 Emails between C. Cortes and J. Gomez re: Oreja piston grua (FLOW0001658-59)

17 #11 Emails between Ruiz Production, H. Marcos, and J. Alvarez (FLOW0003402)

18 #12 Email from Ruiz Production to H. Marcos (FLOW0003650)

19 #13 Emails between C. Cortes, J. Gomez, H. Marcos, and N. Franqueira (FLOW0003257-59)

20 #21 Chart summarizing the repairs to the system performed by Flow

21 #23 Emails between C. Patino, F. Tejada, C. Gomez, and G. Fajardo (CTRL-0001547)

22 #26A Translated English Document: Ruiz Fajardo Business Plan

23 #26B Original Spanish Document: Ruiz Fajardo Business Plan

24 #27A Translated English Document: Ruiz Fajardo Financial Spreadsheets

25 #27B Original Spanish Document: Ruiz Fajardo Financial Spreadsheets

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- 1 #28A Translated English Document: Ruiz Fajardo Notes to the Financial Statement for 2010
- 2 #28B Original Spanish Document: Ruiz Fajardo Notes to the Financial Statement for 2010
- 3 #29A Translated English Document: Ruiz Fajardo Notes to Financial Statements for 2011
- 4 #29B Original Spanish Document: Ruiz Fajardo Notes to Financial Statements for 2011
- 5 #30A Translated English Document: Ruiz Fajardo Notes to Financial Statements for 2012
- 6 #30B Original Spanish Document: Ruiz Fajardo Notes to Financial Statements for 2012
- 7 #31A Translated English Document: Ruiz Fajardo Notes to the Financial Statement for 2013
- 8 #31B Original Spanish Document: Ruiz Fajardo Notes to the Financial Statement for 2013
- 9 #33A Translated English Document: Ruiz Fajardo Notes to the Financial Statement for 2014
- 10 #33B Original Spanish Document: Ruiz Fajardo Notes to the Financial Statement for 2014
- 11 #34A Translated English Document: Ruiz Fajardo Notes to the Financial Statement for 2015
- 12 #34B Original Spanish Document: Ruiz Fajardo Notes to the Financial Statement for 2015
- 13 #35A Translated English Document: Ruiz Fajardo Notes to Financial Statements for 2016
- 14 #35B Original Spanish Document: Ruiz Fajardo Notes to Financial Statements for 2016
- 15 #36A Translated English Document: Memo by J. Gómez to G. Fajardo
- 16 #36B Original Spanish Document: Memo by J. Gómez to G. Fajardo
- 17 #37 Translated English Document: Summary of Flow International's Process
- 18 #38A Translated English Document: Memorandum re: "FLOW pending issues"
- 19 #38B Original Spanish Document: Memorandum re: "FLOW pending issues"
- 20 #39A Translated English Document: Flow Service Reports
- 21 #39B Original Spanish Document: Flow Service Reports
- 22 #40A To be supplemented
- 23 #40B Original Spanish Document Water Laboratory Results Report No. A-6559 by Antek
- 24 #41A Translated English Document: Water Laboratory Results Report No. A-6398-14 by Antek
- 25 #41B Original Spanish Document Water Laboratory Results Report No. A-6398-14 by Antek

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- 1 #42A Translated English Document: Ruiz Fajardo Machine Maintenance Logs
- 2 #42B Original Spanish Document: Ruiz Fajardo Machine Maintenance Logs
- 3 #43 Schedule 1, Summary of Economic Damages Under Breach of Contract,
- 4 #44 Schedule 2, Summary of Economic Damages Under Rescission
- 5 #45 Schedule 3, Projected Lost Profits from Waterjet Cutting Services
- 6 #46 Schedule 4, Extra Expenses Incurred due to Defective Waterjet Cutting System
- 7 #47 Schedule 5, Costs Associated with the Waterjet Cutting System
- 8 #48 Schedule 6, Prejudgment Interest Stated in Columbian Pesos
- 9 #49 Schedule 7, Prejudgment Interest Stated in U.S. Dollars
- 10 #50 Schedule 8, Summary of Projected Revenues from Waterjet Cutting Services
- 11 #51 Schedule 9, Summary of Projected Variable Expenses of Waterjet Cutting Services
- 12 #52 Schedule 10, Summary of Profit & Loss Statements
- 13 #53 Schedule 11, Summary of Balance Sheets
- 14 #54 Schedule 12, Common-Size Profit & Loss Statements
- 15 #55 Schedule 13, Common-Size Balance Sheets
- 16 #56 Flow Waterjet Mach 4 – Dyn XD Article
- 17 #57A Translated English Document: Flow Quote Summary prepared for Ruiz Fajardo
- 18 #57B Original Spanish Document: Flow Quote Summary prepared for Ruiz Fajardo
- 19 #58A Translated English Document: Flow Service Report
- 20 #58B Original Spanish Document: Flow Service Report
- 21 #59 List of spare parts for which Flow denied warranty coverage
- 22 #60A Translated English Document: Flow Spare Parts Quote
- 23 #60B Original Spanish Document: Flow Spare Parts Quote
- 24 #61A Translated English Document: Flow Spare Parts Quote
- 25 #61B Original Spanish Document: Flow Spare Parts Quote

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- 1 #62A Translated English Document: Emails between U. Munoz, et al.
- 2 #62B Original Spanish Document: Emails between U. Munoz, et al. (FLOW0006960-62)
- 3 #63A Translated English Document: Emails between U. Munoz, G. Carillo, et al.
- 4 #63B Original Spanish Document: Emails between U. Munoz, et al. (FLOW0006983-86)
- 5 #64A Translated English Document: Emails between H. Marcos and H. Pilot
- 6 #64B Original Spanish Document: Emails between H. Marcos and H. Pilot (FLOW0006805)
- 7 #65A Translated English Document: Emails between U. Munoz, H. Marcos, and J. Gomez
- 8 #65B Original Spanish Document: Emails between U. Munoz, et al. (FLOW0006837-38)
- 9 #66A Translated English Document: Emails between C. Mette, et al.
- 10 #66B Original Spanish Document: Emails between C. Mette, et al. (FLOW0007302-09)
- 11 #67A Translated English Document: Emails between J. Gomez, et al.
- 12 #67B Original Spanish Document: Emails between J. Gomez, et al. (FLOW0007570-73)
- 13 #68A Translated English Document: Emails re Technical Failures
- 14 #68B Original Spanish Document: Emails between re Technical Failures
- 15 #69A Translated English Document: Emails between Ruiz Fajardo and Flow re Shipment
- 16 #69B Original Spanish Document: Emails between Ruiz Fajardo and Flow re Shipment
- 17 #70A Translated English Document: Emails between Ruiz Fajardo and Flow re Bearing Damage
- 18 #70B Original Spanish Document: Emails between Ruiz Fajardo and Flow re Bearing Damage
- 19 #71A Translated English Document: Emails re Leaks, Inconsistencies, and other Failures
- 20 #71B Original Spanish Document: Emails re Leaks, Inconsistencies, and other Failures
- 21 #72A Translated English Document: Emails re Spare / Replacement Parts
- 22 #72B Original Spanish Document: Emails re Spare / Replacement Parts
- 23 #73 Links to Internet Sources contained in Dieter Tischler's Expert Report
- 24 Defendant's Exhibits
- 25 #105 Photographs Taken by Charles Wakefield

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1 #106 Video Taken by Charles Wakefield

2 **ACTION BY THE COURT**

3 a. This case is scheduled for trial before a jury on January 28, 2019.

4 b. Trial briefs shall be submitted to the Court on or before January 22, 2019.

5 c. Jury instructions requested by either party shall be submitted to the Court on or before
6 January 24, 2019. Suggested questions of either party to be asked of the jury by the Court on
7 voir dire shall be submitted to the Court on or before January 22, 2019.

8

9 This order has been approved by the parties as evidenced by the signatures of their
10 counsel. This order shall control the subsequent course of the action unless modified by a
11 subsequent order. This order shall not be amended except by order of the Court pursuant to
12 agreement of the parties or to prevent manifest injustice.

13

14 DATED this ____ day of January, 2019.

15

16 _____

17 United States District Judge Richard A. Jones

18

19 FORM APPROVED

20 DATED this 14th day of January, 2019.

21 BETTS, PATTERSON & MINES, P.S.

22

23 By s/James D. Nelson
24 By s/Shaina R. Johnson
By s/Jesse L. Taylor
25 James D. Nelson, WSBA #11134

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12 Attorneys for Plaintiff

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25 Attorneys for Defendant

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1
2 **CERTIFICATE OF SERVICE**
3

4 I, Karen L. Pritchard, hereby certify that on January 14, 2019, I electronically filed the
5 following:
6

7 • **[Proposed] Pretrial Order; and**
8 • **Certificate of Service.**

9 with the Court using the CM/ECF system which will send notification of such filing to the
10 following:
11

12 ***Counsel for Defendant:***

13 Andrew Escobar, WSBA #42793
14 Jeffrey DeGroot, WSBA #46839
15 DLA Piper LLP (US)
16 701 Fifth Avenue, Suite 7000
17 Seattle, WA 98104-7044

18 DATED this 14th day of January 2019.
19

20 _____
21 s/Karen L. Pritchard
22 Karen L. Pritchard, Legal Assistant
23

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